

Remarks

The Examiner's thorough review of this application is appreciated. Claims 1-24 were pending in this patent application. Claims 1, 4, 12, 17, 18, 19, 20, 22, and 24 are amended herein. No claims have been added or cancelled.

Applicants respectfully request reconsideration of this application in light of the above amendments and the following remarks.

Rejection of Claims 18, 22 and 24 under 35 U.S.C. § 112, P. 2

Claims 18, 22 and 24 were rejected as being indefinite. These claims have been amended in order to provide antecedent basis for the various terms. Therefore, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 12, 14, 17, 19, 20 and 23 under 35 U.S.C. § 102(b) (Gale)

Claims 12, 14, 17, 19, 20 and 23 have been rejected as being anticipated by U.S. Patent No. 5,975,300 to Gale. Applicants respectfully traverse this rejection. Gale discloses a cardboard box having inserts 81, 82, 83, 84 located adjacent the top and bottom flaps of the box. With regard to claims 1 and 20, Gale does not disclose a unitary floor member, as claimed by Applicants. Gale instead has major flaps and minor flaps on the top and bottom (see column 2, lines 64.) Gale also does not disclose a standoff member which is integrally attached to the floor member forming a unitary construction, but instead has inserts 81, 82, 83, 84.

With regard to claims 14 and 20, Gale does not disclose the claimed "lid inner surface with a lid capture area formed therein." Gale's disclosed insert is not formed therein. With regard to amended claim 17, Gale's "docking posts 106" do not disclose Applicants claimed mating surface corresponding to the surface of the container. Similarly, with regard to amended claim 19, Gale does not include divider members. Accordingly, for these reasons, these rejected claims are not anticipated by Gale, and Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 12, 15, 17, and 19 under 35 U.S.C. § 102(b) (Apps '814)

Claims 12, 15, 17 and 19 have been rejected as being anticipated by U.S. Patent No. 5,351,814 to Apps. Applicants respectfully traverse this rejection. Applicants' independent claim 12 as amended includes a standoff member having "a height relatively shorter than the first and second pairs of opposed upstanding side walls." If Apps' "dividing walls 116" act as standoffs as the Examiner asserts, then Apps' dividing walls 116 have a height equivalent to its "wall structure 112", as illustrated therein. Accordingly, Applicants' claim 12 as amended is not anticipated by Apps. Similarly, claims 17 and 19 as amended are also not anticipated by Apps. Accordingly, these rejected claims are believed to be in a condition for allowance, and the dependent claims are also in a condition for allowance due to their dependency on claim 12. Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 1-4, 7, 8, 10, 11, 13 and 22 under 35 U.S.C. § 103(a) (Gale in view of Hammett '836 or Hepp)

Claims 1-4, 7, 8, 10, 11, 13 and 22 are rejected as obvious over Gale in view of U.S. Patent No. 4,700,836 to Hammett or U.S. Patent No. 5,335,814 to Hepp. Applicants respectfully traverse this rejection. Gale expressly teaches away from being combined with Hammett or Hepp. Gale states that "it is the object of the present invention to provide a shipping container for glass bottles which makes it possible to eliminate the use of vertical partitions within the carton." (See Gale, column 1, lines 23-26, underline added.) Thus, Gale would not be combined with Hammett or Hepp to achieve the claimed divider members.

Moreover, Applicants assert that one skilled in the art would not seek to combine the folding cardboard box of Gale with the more rigid structures of Hammett or Hepp. Accordingly, such a combination of references would be improper, and it is respectfully asserted that these rejected claims would not be obvious in view of this combination. Applicants therefore request that this rejection be withdrawn.

Rejection of Claim 1, 7, 9, 10, 11, 13, 18, and 22 under 35 U.S.C. § 103(a) (Gale in view of Poutiainen)

Claims 1, 7, 9, 10, 11, 13, 18 and 22 are rejected as obvious over Gale in view of U.S. Patent No. 4,585,137 to Poutiainen et al. Applicants respectfully traverse this rejection. For the same reasons provided directly above (incorporated here by reference), Gale expressly teaches away from such a combination and cannot be combined with Poutiainen to achieve the claimed divider members. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 5 and 6 under 35 U.S.C. § 103(a) (Gale in view of Hammett '836 or Hepp, and further in view of Apps)

Claims 5 and 6 are rejected as obvious over Gale in view of Hammett or Hepp, and further in view of Apps. Applicants respectfully traverse this rejection. For the same reasons provided above (incorporated here by reference), Gale expressly teaches away from such a combination and cannot be combined with Hammett, Hepp, or Apps. These claims are also allowable due to their dependency on claim 1, for the reasons noted above.

Moreover, with regard to claim 6, Gale would not be combined with Apps to achieve the claimed language. Gale's cardboard construction would not to lend itself to adding the claimed features to the outside of the container, and one skilled in the art would not look to the molded plastic container of Apps to resolve it. Accordingly, for these reasons, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 13, 16, 22, and 24 under 35 U.S.C. § 103(a) (Gale in view of Apps)

Claims 13, 16, 22 and 24 are rejected as obvious over Gale in view of Apps. Applicants respectfully traverse this rejection. For the same reasons provided above (incorporated here by reference), Gale expressly teaches away from such a combination and cannot be combined with Apps to achieve the claimed divider members. These claims are also allowable due to their dependency on claim 12 and 20, also for the reasons noted above. Accordingly, Applicants respectfully request that this rejection be withdrawn.

Rejection of Claim 21 under 35 U.S.C. § 103(a) (Gale in view of Jamison)

Claim 21 is believed to be in a condition for allowance, due to its dependency on claim 20, for the reasons noted above.

CONCLUSION

In light of the amendments and remarks provided herein, Applicants believe that the claims meet all formal and substantive requirements and that the case is in appropriate condition for allowance. Accordingly, such action is respectfully requested. The Examiner is invited to contact the undersigned if he believes that a telephone conference would expedite allowance of the case or resolve any further questions.


A check in the amount of \$ 920 is enclosed to cover the Petition fee. Please charge any additional fees or credit any overpayments as a result of the filing of this paper to our Deposit Account No. 50-1984.

Respectfully submitted,

GERALD R. KOEFELDA et al

Date: November 30, 2001

By


Konstantine J. Diamond
Reg. No. 39,657
4010 E. 26th St.
Los Angeles, CA 90023
Phone: (323) 262-5145
Fax: (323) 269-8506

Attachment: **VERSION WITH MARKINGS TO SHOW CHANGES MADE**



VERSION WITH MARKINGS TO SHOW CHANGES MADE

1. (Amended) A crate for holding a beverage container having a lower portion and a central label area, the crate comprising:

a unitary bottom panel having an upper surface;

a first pair of opposed side walls and a second pair of opposed side walls attached to the periphery of the bottom panel to form a unitary construction therewith and defining a compartment area therein; and

a plurality of divider members attached to the upper surface of the bottom panel to form a unitary construction therewith and extending longitudinally and transversely on the compartment area to define at least one container receiving area for receiving the beverage container therein, the divider members including a plurality of standoff portions extending inwardly into each container receiving [pocket] area for engaging the lower portion of the container and for providing stability to the corresponding beverage container and for maintaining the corresponding beverage container in a spaced relationship from the divider members.

4. (Amended) The crate of claim 1, further comprising a lid member pivotably attached at least one of the first and second pair of opposed side walls, the lid member having a lid inner surface with a lid capture area formed therein corresponding to each container [retention] receiving area, the lid capture area sized to receive an upper portion of a respective container for providing alignment to the container.

12. (Amended) A crate adapted to store therein a container having a central container portion having label disposed thereon and a lower portion disposed below the label, the crate comprising:

a unitary floor member having an upper surface with a plurality of container support portions disposed thereon;

a first pair of opposed upstanding side walls and a second pair of opposed upstanding side walls integrally attached to a periphery of the floor member forming a unitary construction therewith and defining a compartment area with the floor member; and

at least one container standoff member disposed within the compartment area [proximate] and integrally attached to the floor member forming a unitary construction therewith, the at least one container standoff member [and] associated with a corresponding container support portion for defining at least one container receiving area, the at least one container standoff member having [a relatively short height corresponding to the lower portion of the container] a height relatively shorter than the first and second pairs of opposed upstanding side walls, the standoff member adapted to engage the lower portion of the container and oriented such that it does not contact the label of the container.

17. (Amended) The crate of claim 12, wherein the plurality of standoff portions have a mating surface [for engaging] corresponding to the surface of the container.

18. (Amended) The crate of claim [12] 13, wherein the standoff portions have a height relatively shorter than the corresponding divider members.

19. (Amended) The crate of claim [12] 13, [wherein the standoff portions engage the floor member] wherein the divider members have a height relatively shorter than the first and second pairs of opposed upstanding side walls.

20. (Amended) A crate for retaining containers having an upper container portion, the crate comprising:

a unitary floor having a periphery and an upper surface with a plurality of container support areas;

a first and second pair of opposed sidewalls extending upwardly from the floor periphery forming a unitary construction therewith and defining a compartment area;

a lid member pivotably attached to at least one of the first and second pair of opposed side walls and movable between an open and closed position, the lid member having a lid inner surface having a lid capture area formed therein corresponding to each container support area, the lid capture area sized to receive therein the upper container portion of a respective one of the containers for providing alignment to the container; and

a plurality of low profile spacer members disposed within the compartment and disposed proximate the floor such that the container support areas and proximate spacer

members define container receiving areas for contacting the containers and spacing the container from each other and the sidewalls.

22. (Amended) The crate of claim 20, further comprising a plurality of divider members extending longitudinally and transversely in the compartment area to define the plurality of container retention areas, the divider members spaced apart from the [standoff portions] spacer members to enclose at least one of the container receiving area.

24. (Amended) The crate of claim 20, wherein the lid member has an outer surface with a projection member extending therefrom corresponding to [each] the lid capture area, wherein when the lid member is in the closed position and a second crate is stacked thereupon, at least some of the projections on the outer surface of the lid member is received within a corresponding projection receiving area of the second crate for providing a more stable stacking configuration.